

CORRECTED

Ordinance No: 16-29
Zoning Text Amendment No: 08-14
Concerning: Transit Mixed-Use (TMX)
Zone - Establishment
Draft No. & Date: 4 -11/18/08
Introduced: June 24, 2008
Public Hearing: July 29, 2008
Adopted: November 25, 2008
Effective: December 15, 2008

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: District Council at Request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- establish a Transit Mixed-Use (TMX) Zone; and
- establish allowable land uses, development standards, use of buildable transferable development rights, and approval procedures for development under the Transit Mixed-Use Zone.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-2	“DEFINITIONS”
Section 59-A-2.1	“Definitions”
DIVISION 59-D-2	“PROJECT PLAN FOR OPTIONAL METHOD OF DEVELOPMENT IN CBD, TOMX, AND RMX ZONES.
Section 59-D-2.0	“Zones enumerated”

And by adding the following Division to the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-14 “TRANSIT MIXED-USE ZONES (TMX)”
Sections 59-C-14.1 through 59-C-14.12

***CLERK'S NOTE:** Typographical errors corrected on page 5, line 1; page 6, line 45; and page 24, line 355 (last row of the chart).*

EXPLANATION:

Boldface indicates a heading or a defined term.

Underlining indicates text that is added to existing laws by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

* * * indicates existing law unaffected by the text amendment.

OPINION

Zoning Text Amendment (ZTA) 08-14, sponsored by the District Council at the request of the Planning Board, was introduced on June 24, 2008. The Planning Board recommends using a new Transit Mixed-Use (TMX) zone proposed in ZTA 08-14 instead of amending the Transit-Oriented Mixed-Use zone in Transit Station Development Areas. ZTA 08-14 would establish the TMX zone.

In its report to the Council, the Montgomery County Planning Board recommended that the zoning text amendment be approved with amendments. In light of the findings of the Research and Technology Division, and because of the testimony provided by the public, the Planning Board recommended certain adjustments to the TMX zone as introduced: (1) exempt residential development from the Building Lot Termination (BLT) requirement where the workforce housing requirement applies; (2) increase the maximum optional method density from 3.0 to 4.0; (3) allow development under a development plan approved for the TS-R and TS-M zones to remain valid and construction to continue subject to applicable approvals (FAR above the approved development plan limit would be subject to the TMX standards); and (4) allow development under a preliminary plan to remain valid and construction to continue subject to applicable approvals (a preliminary plan approved before the applicable SMA adoption date may be amended after the SMA adoption date under the standards of the previous zone or under the TMX zone standards). The Planning Board also recommended amending the TMX zone so that the County Executive would determine the cost of a single BLT.

The County Executive recommended not allowing a master plan or sector plan to limit density from the maximum in the TMX zone. He also recommended amendments to allow more residential density for workforce housing, and considering bonus density for the purchase of BLTs, instead of requiring their purchase for all density above the standard method of development.

The Council held a public hearing on ZTA 08-14 on July 29, 2008. Testimony was received in favor of and in opposition to the BLT program. Several speakers who represented landowners favored the general direction of the amendments proposed by the Planning Board's testimony: 1) reducing the financial burden of purchasing BLTs; 2) increasing the allowable density; and 3) grandfathering approved projects. The Planning Board's testimony responded to some of the major concerns found in the Council's public hearing testimony, other than dropping the requirement for the purchase of BLTs. Opponents to the TMX zone characterized the BLT

requirement as a tax on desirable development. The agricultural community supported a privately financed BLT program, as did the League of Woman Voters and the Sierra Club.

The Housing Opportunities Commission expressed concern about the economic impact of requiring BLTs, and recommended finding ways to reduce development costs. The Sierra Club also spoke in favor of reducing the parking requirements to offset the costs of BLTs. In addition, the Sierra Club requested the exclusion of proposed transit stations from the definition of a Transit Station Development Area. Representatives of auto dealerships requested an expansion of the land uses that would be allowed in the TMX zone. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held worksessions to review the amendment on September 8, September 22, and October 6, 2008. After careful review of the materials of record, and for the reasons described in the memorandum presented to Council on October 28 concerning ZTA 08-14, the Committee recommended approving ZTA 08-14 with the following amendments:

- 1) Standard method of development in TMX zone should have:
 - a) a maximum floor area ratio (FAR) of .5 with increases for MPDUs and workforce housing;
 - b) a maximum building height of 42 feet; and
 - c) streetscaping should be required immediately in front of the development.
- 2) Optional method of development in the TMX zone should have:
 - a) a maximum FAR of 4 with increases for MPDUs and workforce housing;
 - b) criteria for height and density but no maximum height in the zone;
 - c) design principles to implement the sector plan recommendations for optional method development adopted by the Planning Board;
 - d) a requirement for acquiring BLTs excluding residential projects that are required to provide workforce housing;
 - e) an option to bypass a project plan application if the project also requires subdivision approval; and
 - f) payments instead of providing on-site amenities used in the same Transit Station Development Area.
- 3) The land uses in the previously proposed TOMX zone and all the uses allowed in the Central Business District (CBD) zone should be added to the list of permitted uses, including automobile repair.
- 4) The minimum parking requirements should be reduced from the current requirement in Division 59-E.
- 5) Require TMX development to be "consistent" with the applicable master or sector plan.
- 6) The transfer of density provision should require 18,000 square feet of land at a minimum, unless otherwise recommended by a master or sector plan, and the transfer should leave the sending property standard method density unless the sending site is recommended for open space in the master or sector plan.

- 7) The grandfather provision should include all approved development plans and all approved preliminary plans, including amendments to those plans.

The rationale for imposing a BLT obligation is directly related to the impacts created by the proposed development. All development in the County increases the development pressure in the Rural Density Transfer (RDT) area. Residential development increases the demand for commercial development. Increased employment increases the demand for residential development. More than 60 percent of people who work in the County also live in the County. The BLT removes development pressure in the RDT area.

The District Council reviewed Zoning Text Amendment No.08-14 at worksessions held on October 28 and November 18, 2008, and agreed with the recommendations of the Planning, Housing, and Economic Development Committee except as follows;

- the maximum optional method of development FAR was changed to 2 plus density required for MPDUs and workforce housing;
- the name of the zone created was changed to TMX-2 with the expectation that additional zones may be created under the TMX requirements;
- the minimum number of parking spaces was reduced for certain retail uses, reflecting the recommendations of the Urban Land Institute;
- the criteria for determining height and density were amended to reflect comments from the Planning Board;
- the setback standard was changed under certain circumstances; and
- the requirement for development "to follow" Planning Board adopted design guidelines was changed to "consistent with".

For these reasons and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 08-14 will be approved as amended.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. Division 59-A-2 is amended as follows:**

2 **Division 59-A-2. Definitions and Interpretation.**

3 **59-A-2.1. Definitions**

4 * * *

5 **[[Building Lot Termination Easement Program:** A program by which a BLT is
6 purchased or donated in exchange for terminating some or all of the residential
7 building lots. A transferable development right that is eligible for transfer into a
8 designated TDR receiving area that is not a residential building lot on a parcel in
9 the RDT Zone is not eligible for use under the Building Lot Termination Easement
10 Program.

11
12 **Buildable lot Termination (BLT) Transferable Development Right: A**
13 transferable development right in the Rural Density Transfer (RDT) Zone that can
14 be used for building one dwelling for each 25 acres in that zone; distinguished
15 from a transferable development right that is in excess of the density allowed in the
16 RDT zone.]]

17
18 **Building Lot Termination (BLT):** A transferable development right (TDR)
19 created from land that:

20 (a) consists of at least 25 acres;

21 (b) is capable of being served by an individual sewage treatment unit which
22 meets the requirements of Chapter 27A and applicable regulations issued
23 under that Chapter;

24 (c) is located in the Rural Density Transfer (RDT) zone; and

25 (d) could be transferred by a BLT Easement under this Chapter.

26 When a BLT easement is recorded in the land records, the easement extinguishes
27 the right to build a dwelling unit in the RDT zone; this attribute distinguishes a
28 BLT from other TDRs.

29
30 **Buildable Lot Termination Easement.** A form of an agricultural easement that
31 runs with the land in perpetuity and extinguishes the right to construct a residential
32 dwelling unit on land located in the Agricultural Reserve and zoned Rural Density
33 Transfer.

34 * * *

35 **[[Transferable Development Right (TDR):** The right to transfer the residential
36 buildable capacity in the Rural Density Transfer (RDT) Zone to other designated
37 zones at the rate of one transferable development right (TDR) for each full five
38 acres owned in the RDT Zone.]]

39
40 **Transfer of development rights:** The conveyance of development rights by deed,
41 easement, or other legal instrument authorized by local law to another parcel of
42 land and the recordation of that conveyance among the land records of
43 Montgomery County, Maryland.

44
45 **Sec. 2. Division 59-C-14 is added as follows:**

46 **[[DIVISION 59-C-14. TRANSIT MIXED-USE (TMX) ZONE**

47 **59-C-14.1. Zone permitted.**

48 The TMX zone is for use in a transit station development area.

49 **Sec. 59-C-14.2. Transit Mixed-Use (TMX) Zone.**

50 **59-C-14.21. Description, purpose, and general requirements**

51 **59-C-14. 21.1. Description.**

The TMX Zone permits moderate through intensive mixed-use development in a Transit Station Development Area. The TMX zone must be shown on a master or sector plan and applied by Sectional Map Amendment. The zone establishes density, uses, and standards, for standard and optional methods of development which may be limited by the recommendations of the applicable master or sector plan.

59-C-14.2.2. Purpose.

The TMX zone fosters transit-oriented development by permitting increased density and height consistent with the recommendations of an approved and adopted master plan or sector plan. The purpose of the TMX zone is to:

- (a) Implement the land use and density recommendations of approved and adopted master or sector plans for Transit Station Development Areas by:
 - (1) facilitating mixed-use development with a compatible network of interconnecting streets, open squares, plazas, defined streetscapes, and civic and community oriented uses ; and
 - (2) providing incentives and flexible development standards that foster innovative design and technology.
- (b) Encourage land assembly in a compact and efficient form.
- (c) Provide a variety of housing opportunities, including affordable housing, near transit stations.
- (d) Encourage sustainable and efficient design.
- (e) Improve multi-modal access to transit from the communities surrounding transit station development areas.
- (f) Provide receiving capacity for buildable lot terminations (BLT).

59-C-14.2.2. Location.

Land classified in the TMX Zone must be located in a Transit Station Development Area.

59-C-14.23. Methods of development. Two methods of development are available.

(a) **Standard Method of Development:** The standard method requires compliance with a specific set of development standards and permits a range of uses and a density compatible with these standards. Site plan review is required under section 59-D-3. If residential uses are included in a development, Moderately Priced Dwelling Units must be provided as required under Chapter 25A and workforce housing units must be provided as required under Section 59-A-6.18 and Chapter 25B. The maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site.

(b) **Optional Method of Development:**

The Optional Method of Development allows greater densities and encourages innovative design and building technologies to create pedestrian-oriented and mixed-use development patterns and an environment capable of supporting the greater densities. Approval of the Optional Method of Development is dependent upon providing required public use space, public amenities and facilities, and participation in the BLT program. Public use space and public facilities and amenities are required to support the additional densities permitted under the Optional Method of Development. If residential uses are included in a development, Moderately Priced Dwelling Units must be provided as required under Chapter 25A and workforce housing units must be provided as required under Section 59-A-6.18 and Chapter 25B. The maximum dwelling unit density or residential

FAR may be increased in proportion to any MPDU density bonus provided on site. The procedure for the approval of the Optional Method of Development is under Section 59-D-2. Site plans review is required under Section 59-D-3.

59-C-14.24. Land uses.

No use is allowed except as indicated in the following table:

-Permitted Uses. Uses designated by the letter "P" are permitted on any lot in the zones indicated, subject to all applicable regulations.

-Special Exception Uses. Uses designated by the letters "SE" may be authorized as special exceptions under Article 59-G.

	TMX	
	Standard	Optional
(a) Residential:		
Dwellings.	P	P
Group home, small.	P	P
Group home, large.	P	P
Hotel or motel.	P	P
Housing and related facilities for senior adults or persons with disabilities.	P	P
Life care facility.	P	P
Personal living quarters.	P	P
(b) Transportation, communication and utilities:		
Parking garages, automobile.	P	P
Public utility buildings, structures, and underground facilities.	P	P
Radio and television broadcasting studio.	P	P
Rooftop mounted antennas and related unmanned equipment building, equipment cabinet or equipment room.	P	P
Taxicab stand, not including storage while not in use.	P	P
(c) Commercial:		
Antique shops, handicrafts or art sales and supplies.	P	P
Automobile sales, retail showroom.	P	P
Book store.	P	P
Convenience food and beverage store, without fuel sales.	P	P
Department stores.		P
Drug store.	P	P
Eating and drinking establishment, excluding drive-in.	P	P
Florist shop.	P	P
Furniture store, carpet, or related furnishing sales or service.	P	P
Gift shop.	P	P

	TMX	
	Standard	Optional
Grocery store.	P	P
Hardware store.	P	P
Office supply store.	P	P
Office, general.	P	P
Office, professional including banks and financial institutions (excluding check cashing stores).	P	P
	Standard	Optional
Offices for companies principally engaged in health services, research and development.	P	P
Newsstand.	P	P
Photographic and art supply store.	P	P
Pet sales and supply store.	P	P
Specialty shop.	P	P
(d) Services:		
Adult foster care homes.	P	P
Ambulance or rescue squad, public supported.	P	P
Animal boarding place.	SE	SE
Art, music and photographic studios.	P	P
Automobile filling station.	SE	SE
Automobile rental services, excluding automobile storage and supplies.	P	P
Barber and beauty shop.	P	P
Charitable and philanthropic institutions.	P	P
Clinic.	P	P
Child daycare facility		
- Family day care.	P	P
- Group day care.	P	P
- Child day care center.	P	P
Daycare facility for not more than 4 senior adults and persons with disabilities.	P	P
Domiciliary care for no more than 16 senior adults.	P	P
Dry cleaning and laundry pick-up station.	P	P
Duplicating services.	P	P
Educational, private institution.	P	P
Home occupation, no impact.	P	P
Home occupation, registered.	P	P
Home occupation, major.	SE	SE
Hospice care facility.	P	P
Hospitals, veterinary.	SE	SE
International public organization.	P	P
Place of religious worship.	P	P
Publicly owned or publicly operated uses.	P	P
Shoe repair shop.	P	P
Tailoring or dressmaking shop.	P	P
Universities and colleges teaching and research facilities.	P	P
(e) Research and Development and Biotechnology	P	P

	TMX	
	Standard	Optional
<u>Laboratories.</u>	<u>P</u>	<u>P</u>
<u>Advanced Technology and Biotechnology.</u>	<u>P</u>	<u>P</u>
<u>Manufacturing, compounding, processing or packaging of cosmetics, drugs, perfumes, pharmaceuticals, toiletries, and products resulting from biotechnical and biogenetic research and development.</u>	<u>P</u>	<u>P</u>
<u>Manufacturing and assembly of medical, scientific or technical instruments, devices and equipment.</u>	<u>P</u>	<u>P</u>
<u>Research, development, and related activities.</u>	<u>P</u>	<u>P</u>
<u>(f) Cultural, entertainment and recreational:</u>		
<u>Auditoriums or convention halls.</u>	<u>P</u>	<u>P</u>
<u>Billiard parlor.</u>	<u>P</u>	<u>P</u>
<u>Bowling alley.</u>	<u>P</u>	<u>P</u>
<u>Health clubs and gyms.</u>	<u>P</u>	<u>P</u>
<u>Libraries and museums.</u>	<u>P</u>	<u>P</u>
<u>Park and playgrounds.</u>	<u>P</u>	<u>P</u>
<u>Private clubs and service organizations.</u>	<u>P</u>	<u>P</u>
<u>Recreational or entertainment establishments, commercial.</u>	<u>P</u>	<u>P</u>
<u>Theater, legitimate.</u>	<u>P</u>	<u>P</u>
<u>Theater, indoor.</u>	<u>P</u>	<u>P</u>

59-C-14.25. Development standards.

The development standards applicable to the Standard Method and Optional Method of Development are established in this section. In addition to the requirements specified in this table, all Optional Method of Development projects must be consistent with the recommendations of the applicable master plan or sector plan.

123

	TMX	
	Standard	Optional
59-C-14.25.1. Minimum net lot area required for any development (in square feet):¹		<u>18,000</u>
59-C-14.25.2. Maximum Building Coverage (percent of net lot area):	<u>75</u>	
59-C-14.25.3. Minimum Public Use Space (percent of net lot area):	<u>10²</u>	<u>20³</u>
59-C-14.25.4. Maximum Building Height (in feet):	<u>28</u>	
- If adjoining or directly across the street from land recommended for or developed in a residential zone with a maximum of 15 dwelling units per acre or less (in feet)	<u>35</u>	
59-C-14.25.5. Minimum Setbacks (in feet):		
- From an adjacent TMX Zone ⁴	<u>15</u>	
- From an adjacent commercial or industrial zone	<u>20</u>	
- From an adjacent single family residential zone	<u>25</u>	
- From a public right-of-way	<u>10</u>	
59-C-14.25.6. Minimum and Maximum Density of Development⁵ (floor area ratio)	<u>.25 - .5⁶</u>	<u>3.0⁶</u>
12.5% of any density above the maximum of the standard method, as set in the applicable master or sector plan, must be through the purchase of BLTs or through a contribution to the BLT Land trust, as described in Section 59-C-14.30.		

124

¹ A smaller lot may be approved if the lot is located adjacent to or confronting another lot either classified in or under application for the same zone, or the combined lots are subject to a single project plan. The minimum area requirement does not prohibit a lot of less than 18,000 square feet for purposes of subdivision or record plat approval.

² The required standard method public use space may be reduced to 5% if the Planning Board finds that the reduction is necessary to accommodate the construction of MPDU's, including any bonus units, on-site.

³ The required optional method public use space may be reduced or eliminated on-site, if an equivalent amount of public use space is provided off-site in the same transit station development area within a reasonable time. A payment instead of all or some of the required public use space may be made if approved under Division 59-D-2.

⁴ If the proposed building or the adjacent building has windows or apertures facing the lot line that provides light, access, or ventilation to a habitable space, the setback shall be 15 feet. If the adjacent building does not have windows or apertures, no setback is required.

⁵ The maximum dwelling unit density or residential FAR may be increased in proportion to any MPDU density bonus provided on-site.

⁶ Master or sector plan recommendations may limit the maximum density within these ranges.

59-C-14.26. Special standards for development under the TMX zone.

(a) Public facilities and amenities. Public facilities and amenities are required for approval of a standard or optional method development project.

(b) Design Principles. Site plans submitted for projects in the TMX zone must follow general design principles recommended by the applicable master or sector plan and design guidelines adopted by the Planning Board to implement the applicable master or sector plan. Unless those general principles or design guidelines recommend otherwise, or the Planning Board finds that it is infeasible to follow the design principles due to site constraints or other reasons, any project developed in the TMX zone should:

- (1) use sustainable design principles;
- (2) orient all buildings to streets;
- (3) locate off-street parking to the side, rear, or below grade;
- (4) create a continuous building line to accentuate open space and building entrances; blank building facades must be avoided or minimized;
- (5) provide pedestrian-oriented activity at street level with uses such as storefront retail, residential entrances, office lobbies, and restaurants;
- (6) promote pedestrian safety with safety-oriented environmental design and clearly designated crosswalks and sidewalks;
- (7) include street trees and landscaping on all streets;
- (8) provide continuous, direct and convenient connections to transit stations for pedestrians and bicyclists;
- (9) locate and screen service and loading areas to reduce visibility from any street;

- (10) for any building other than a one-family residential building, locate mechanical equipment within buildings or within a mechanical equipment penthouse; however if mechanical equipment is located on a roof or is freestanding, it must be effectively screened;
- (11) design street lighting to avoid an adverse impact on surrounding uses, while also providing a sufficient level of illumination for access and security;
- (12) provide tree canopy along each street;
- (13) provide street furniture such as benches, trash receptacles and planters;
- (14) enhance crosswalk areas with accessible curb ramps.

59-C-14. 27.Off-street parking. As required under Article 59-E.

59-C-14.28. Special Standards for Optional Method of Development projects.

- (a) **Density and mix of uses.** In approving the mix of uses and the proposed densities, the Planning Board must consider the size of the parcel, and the relationship of the existing and proposed building or buildings to its surrounding uses. The mix of uses and the proposed densities must substantially conform to the recommendations of an approved and adopted master plan or sector plan.
- (b) **Building height and setbacks.** The maximum height permitted for any building and the minimum building setback requirements must be determined during project plan review. In approving height limits or setback requirements, the Planning Board must consider the size of the lot or parcel, the relationship of existing and proposed buildings to surrounding uses, the need to preserve light and air for the residents of the

development and residents of surrounding properties, and any other factors relevant to the height or setback of the building. The proposed building height and the proposed setbacks must substantially conform to the recommendations of an approved and adopted master plan or sector plan.

(c) **Transfer of public use space, density, and mix of uses.** The Planning Board may approve the transfer of density, the mix of uses, and the public use space, between parcels classified in the TMX zone in the same transit station development area. The transfer of density must not result in an increase of density or height on parcels that abut or confront properties recommended for one-family residential development by an approved and adopted master plan or sector plan. Any transfer of public use space, density, or mix of uses must not result in a change in the total combined amount of public use space, density, or mix of uses otherwise attributable to the relevant parcels, and such transfers must be approved as part of a combined project plan for all relevant parcels under Section 59-D-2 and Section 59-D-3.

59-C-14.29. Existing buildings and uses.

Any lawful structure, building or established use that existed before the applicable Section Map Amendment adoption date, is a conforming structure or use and may be continued, structurally altered, repaired, renovated, or enlarged up to 10 percent of the gross building floor area or 7,500 square feet, whichever is less. However, any enlargement of the building that is more than 10 percent of the gross floor area or 7,500 square feet or construction of a new building must comply with the standards of the TMX Zone.

59-C-14.30. Special regulations for use of a Buildable Lot Termination (BLT) Development Right.

- (a) 12.5 percent of any floor area above the maximum allowed under the standard method of development, as recommended in the applicable master or sector plan, must be supported through the purchase by the applicant of a BLT or through a contribution to the Agricultural Land Preservation Fund under Chapter 2B for purchase of an easement on real property to preserve agricultural land in the County.
- (b) One BLT must be required for 9,000 square feet of residential space, and 7,500 square feet of non-residential space for the amount of floor area supported through the purchase of BLTs .
- (c) A BLT must be created, transferred and extinguished only by means of a recordable easement in perpetuity approved by the Planning Board, including appropriate releases. The BLT easement must extinguish the right to construct a dwelling unit on each 25 acres in the RDT zone subject to the easement.
- (d) If the applicant for optional method of development under the TMX zone cannot purchase an easement, or if the amount of density to be attributed to BLT easement is a fraction of the applicable floor area equivalent, the Planning Board must require the applicant to pay the Agricultural Land Preservation Fund an amount equal to the average annual market rent for class A office space or multi-family residential space in the applicable master or sector plan area for the amount of floor area required to be supported by buildable rights termination.

59-C-14.31. Development approval procedures under the standard and optional method of development.

- (a) In the standard method, APF validity will be determined at subdivision or at site plan if subdivision is not required.

(b) In the optional method, APF validity will be determined at the time of project plan if subdivision is not required.

(c) Under both standard and optional method, if subdivision is not required, the applicant must record a plat under Sec. 50-35A.

(d) The Planning Board must find that the proposed development:

(1) satisfies the provisions of this chapter;

(2) substantially conforms to any numeric limits recommended in the applicable master or sector plan concerning floor area ratio, dwelling units per acre, building heights, and setbacks; and is in substantial conformance with the recommendations of the applicable master or sector plan; and

(3) achieves a desirable development compatible with site conditions, surrounding existing development, and anticipated future development.

59-C-14.32. Development standards applicable to the standard and optional method of development.

In making the determination as to the final density, the Planning Board must consider whether the proposal:

(a) substantially conforms to any numeric limits recommended in the applicable master or sector plan concerning floor area ratio, dwelling units per acre, building heights, and setbacks; and substantially conforms with the recommendations in the applicable approved master or sector plan;

(b) preserves environmentally sensitive and priority forest areas, and mitigates unavoidable impacts on the natural environment;

(c) facilitates good transit serviceability and creates a desirable and safe pedestrian environment; and

(d) is compatible with surrounding land uses and promotes harmonious development of the planning area.]]

DIVISION 59-C-14. TRANSIT MIXED-USE (TMX) ZONE

59-C-14.1. Zone permitted.

The TMX zone is permitted only in a Transit Station Development Area. The Transit Station Mixed-Use zone and its identifying symbol is as follows:

TMX-2---Transit Mixed-Use, 2

Sec. 59-C-14.2. Transit Mixed-Use (TMX) Zone.

59-C-14.21. Description, purpose, and general requirements

59-C-14.211. Description.

All of the references to the TMX zone in Chapter 59 apply to the TMX-2 zone. The TMX zone must be recommended in a master or sector plan.

The zone permits moderate through intensive mixed-use development in a Transit Station Development Area. The zone establishes densities, land uses, and standards for the standard and optional methods of development.

59-C-14.212. Purpose.

The purposes of the TMX zone are to:

(a) Implement the recommendations of approved and adopted master or sector plans for Transit Station Development Areas by:

(1) facilitating mixed-use development with a compatible network of interconnecting streets, open squares, plazas, and civic and community oriented uses;

(2) providing flexible development standards; and

(3) encouraging designs that produce a desirable relationship among individual buildings, the circulation system, public spaces, and

adjacent areas, and that foster use of non-auto forms of transportation, including pedestrian, bicycle, and public transit.

- (b) Encourage land assembly.
- (c) Provide a variety of housing opportunities.
- (d) Promote the effective use of transit facilities.
- (e) Provide for building lot terminations (BLTs).

59-C-14.213. General requirements

- (a) **Master plan or sector plan conformance.** Development under the TMX zone must be consistent with the recommendations of the applicable master or sector plan.
- (b) **MPDUs and workforce housing.** If residential uses are included in a development, Moderately Priced Dwelling Units must be provided under Chapter 25A, and workforce housing units must be provided under Section 59-A-6.18 and Chapter 25B. The maximum residential FAR may be increased in proportion to any MPDU density bonus and workforce housing units provided on-site. Site plan review under section 59-D-3 is required.

59-C-14.214. Off-street parking. Off-street parking must satisfy Article 59-E except:

- (a) the minimum number of parking spaces for every residential unit, without regard to the number of bedrooms in each unit, is 1 space for every market rate unit and .5 space for every MPDU and workforce housing unit;
- (b) the minimum number of parking spaces required for office development in the Southern Area must be used to determine the minimum number of spaces required for office development in the South Central Area; however, for office space under a lease to any

government agency or entity for a duration of 20 years or more, the minimum number of spaces required is 1.5 spaces for every 1,000 square feet of gross floor area; and

(c) the minimum number of parking spaces required for general retail and restaurant use is 4 spaces for every 1,000 square feet of gross leasable area, if less than 20 percent of the leasable area is devoted to restaurant use.

59-C-14.215. Location.

Land classified in the TMX zone must be located in a Transit Station Development Area.

59-C-14.22. Methods of development. Two methods of development are available under the TMX zone.

(a) **Standard Method of Development:** The standard method requires compliance with a specific set of development standards and permits a range of uses and a density compatible with these standards. Site Plan is required under Section 59-D-3. If streetscaping on the right-of-way immediately fronting the development is needed, then development may only be approved on the condition that the development will provide that streetscaping.

(b) **Optional Method of Development:**

(1) Under the optional method, greater densities may be permitted and there are fewer specific standards, but additional public facilities and amenities must be provided by the developer. The procedure for the approval of an optional method of development project is under Section 59-D-2. Site plan review is required under Section 59-D-3. Site plans submitted for optional method projects must be consistent with general design principles recommended by the applicable

master or sector plan, and design guidelines adopted by the Planning Board, to implement the applicable master or sector plan.

- (2) Projects that are subject to subdivision under Chapter 50 have the option of submitting a Division 59-D-2 Project Plan. If the applicant chooses not to submit a Project Plan, the Planning Board must find that the proposed subdivision will satisfy the standards of 59-D-2.42 and 59-D-2.43 in order to approve the preliminary plan of subdivision.

59-C-14.23. Land uses.

No use is allowed except as indicated below:

-Permitted Uses. Uses designated by the letter "P" are permitted, subject to all applicable regulations.

-Special Exception Uses. Uses designated by the letters "SE" may be authorized as special exceptions under Article 59-G.

<u>TMX Land Uses</u>	
<u>(a) Residential:</u>	
<u>Dwellings.</u>	<u>P</u>
<u>Group home, small.</u>	<u>P</u>
<u>Group home, large.</u>	<u>P</u>
<u>Hotel or motel.</u>	<u>P</u>
<u>Housing and related facilities for senior adults or persons with disabilities.</u>	<u>P</u>
<u>Life care facility.</u>	<u>P</u>
<u>Personal living quarters.</u>	<u>P</u>
<u>(b) Transportation, communication, and utilities:</u>	
<u>Bus terminal, non-public.</u>	<u>P</u>
<u>Parking garages, automobile.</u>	<u>P</u>
<u>Public utility buildings, structures, and underground facilities.</u>	<u>P</u>
<u>Radio and television broadcasting studio.</u>	<u>P</u>
<u>Rooftop mounted antennas and related unmanned equipment building, equipment cabinet, or equipment room.</u>	<u>P</u>
<u>Taxicab stand, not including storage while not in use.</u>	<u>P</u>
<u>(c) Commercial:</u>	
<u>Antique shops, handicrafts or art sales and supplies.</u>	<u>P</u>
<u>Appliance store.</u>	<u>P</u>
<u>Automobile sales, indoors and outdoors.</u>	<u>P</u>

<u>TMX Land Uses</u>	
<u>Automobile sales, retail showroom.</u>	<u>P</u>
<u>Book store.</u>	<u>P</u>
<u>Convenience food and beverage store, without fuel sales.</u>	<u>P</u>
<u>Department stores.</u>	<u>P</u>
<u>Drug store.</u>	<u>P</u>
<u>Eating and drinking establishment, excluding drive-in.</u>	<u>P</u>
<u>Florist shop.</u>	<u>P</u>
<u>Furniture store, carpet, or related furnishing sales or service.</u>	<u>P</u>
<u>Gift shop.</u>	<u>P</u>
<u>Grocery store.</u>	<u>P</u>
<u>Hardware store.</u>	<u>P</u>
<u>Office supply store.</u>	<u>P</u>
<u>Office, general.</u>	<u>P</u>
<u>Office, professional including banks and financial institutions (excluding check cashing stores).</u>	<u>P</u>
<u>Offices for companies principally engaged in health services, research and development.</u>	<u>P</u>
<u>Newsstand.</u>	<u>P</u>
<u>Photographic and art supply store.</u>	<u>P</u>
<u>Pet sales and supply store.</u>	<u>P</u>
<u>Specialty shop.</u>	<u>P</u>
(d) Services:	
<u>Adult foster care homes.</u>	<u>P</u>
<u>Ambulance or rescue squad, public supported.</u>	<u>P</u>
<u>Animal boarding place.</u>	<u>SE</u>
<u>Art, music, and photographic studios.</u>	<u>P</u>
<u>Automobile filling station.</u>	<u>P</u>
<u>Automobile rental services, excluding automobile storage and supplies.</u>	<u>P</u>
<u>Automobile repair and service.</u>	<u>P</u>
<u>Barber and beauty shop.</u>	<u>P</u>
<u>Charitable and philanthropic institutions.</u>	<u>P</u>
<u>Clinic.</u>	<u>P</u>
<u>Child daycare facility.</u>	
<u>- Family day care.</u>	<u>P</u>
<u>- Group day care.</u>	<u>P</u>
<u>- Child day care center.</u>	<u>P</u>
<u>Daycare facility for not more than 4 senior adults and persons with disabilities.</u>	<u>P</u>
<u>Domiciliary care for no more than 16 senior adults.</u>	<u>P</u>
<u>Dry cleaning and laundry pick-up station.</u>	<u>P</u>
<u>Duplicating services.</u>	<u>P</u>
<u>Educational, private institution.</u>	<u>P</u>
<u>Home occupation, no impact.</u>	<u>P</u>
<u>Home occupation, registered.</u>	<u>P</u>
<u>Home occupation, major.</u>	<u>SE</u>

<u>TMX Land Uses</u>	
<u>Hospice care facility.</u>	<u>P</u>
<u>Hospitals, veterinary.</u>	<u>SE</u>
<u>International public organization.</u>	<u>P</u>
<u>Place of worship.</u>	<u>P</u>
<u>Publicly owned or publicly operated uses.</u>	<u>P</u>
<u>Shoe repair shop.</u>	<u>P</u>
<u>Tailoring or dressmaking shop.</u>	<u>P</u>
<u>Universities and colleges teaching and research facilities.</u>	<u>P</u>
<u>(e) Research and Development and Biotechnology</u>	
<u>Laboratories.</u>	<u>P</u>
<u>Advanced Technology and Biotechnology.</u>	<u>P</u>
<u>Manufacturing, compounding, processing, or packaging of cosmetics, drugs, perfumes, pharmaceuticals, toiletries, and products resulting from biotechnical and biogenetic research and development.</u>	<u>P</u>
<u>Manufacturing and assembly of medical, scientific, or technical instruments, devices, and equipment.</u>	<u>P</u>
<u>Research, development, and related activities.</u>	<u>P</u>
<u>(f) Cultural, entertainment and recreational:</u>	
<u>Auditoriums or convention halls.</u>	<u>P</u>
<u>Billiard parlor.</u>	<u>P</u>
<u>Bowling alley.</u>	<u>P</u>
<u>Health clubs and gyms.</u>	<u>P</u>
<u>Libraries and museums.</u>	<u>P</u>
<u>Park and playgrounds.</u>	<u>P</u>
<u>Private clubs and service organizations.</u>	<u>P</u>
<u>Recreational or entertainment establishments, commercial.</u>	<u>P</u>
<u>Theater, indoor.</u>	<u>P</u>
<u>Theater, legitimate.</u>	<u>P</u>
<u>(g) Miscellaneous uses</u>	
<u>Accessory buildings and uses.</u>	<u>P</u>

59-C-14.24. Development standards.

Standard method and optional method of development projects must satisfy the following development standards.

	<u>TMX-2</u>		<u>Special Provisions</u>
	<u>Standard</u>	<u>Optional</u>	
<u>59-C-14.241. Minimum net lot area required for any development (in square feet):</u>		<u>18,000</u>	<u>A lot smaller than 18,000 s.f. may be approved if it abuts or confronts another lot classified in or recommended for TMX zone, and the combined lots are subject to a single project plan.</u>
<u>59-C-14.242. Maximum Building Coverage (percent of net lot area):</u>	<u>75</u>	<u>Determined at project plan</u>	

	TMX-2		<u>Special Provisions</u>
	<u>Standard</u>	<u>Optional</u>	
<u>59-C-14.243. Minimum Public Use Space (percent of net lot area):</u>	<u>10</u>	<u>20</u>	<u>The required public use space for a standard method project may be reduced to 5% if the Planning Board finds that the reduction is necessary to accommodate the construction of MPDU's, including any bonus units, on-site.</u>
<u>59-C-14.244. Maximum Building Height (in feet):</u>	<u>42</u>	<u>Determined at project plan</u>	<u>See Section 59-C-14.26</u>
<u>- If adjoining or confronting lot is recommended for or in a residential zone with a maximum of 15 dwelling units per acre or less</u>	<u>35</u>	<u>Determined at project plan</u>	
<u>59-C-14.245. Minimum Setbacks (in feet):</u>		<u>Determined at project plan</u>	
<u>- From an adjacent building on a separate lot</u>	<u>15</u>	<u>Determined at project plan</u>	<u>[[No]] A setback is not required for any building if the proposed building [[for the]] and any building on an abutting lot has no windows or apertures facing the lot line. The setback must be 15 feet in the optional method if the proposed building or [[the]] any building on an abutting lot has windows or apertures facing the lot line that provide light, access, or ventilation to a habitable space.</u>
<u>- From an adjacent commercial or industrial zone</u>	<u>20</u>		
<u>- From an adjacent single family residential zone</u>	<u>25</u>	<u>25</u>	
<u>- From a public right-of-way</u>	<u>10</u>		
<u>59-C-14.246. Maximum Density of Development (floor area ratio):</u>	<u>0.5</u>	<u>2</u>	<u>The maximum residential FAR may be increased in proportion to any MPDU density bonus and workforce housing units provided on-site.</u>
<u>59-C-14.247 BLT Requirement:</u>		<u>12.5% of any density above 0.5 FAR</u>	<u>See Section 59-C-14.28</u>

59-C-14.25. Additional provisions for optional method of development projects.

(a) In approving an optional method project, the Planning Board must find that the project meets the requirements of Section 59-D-2. The Planning Board must also find, in the context of development in the Transit Station

Development Area or on the site of the application, that the project satisfies the following criteria:

- (1) Density and building height should generally decrease as the distance from a transit facility increases;
- (2) Density and building height should generally be lower as the distance to single family homes decreases;
- (3) Buildings should be sited to minimize the impact of shadows on single family neighborhoods outside the TMX zone;
- (4) Building heights may be adjusted to avoid or minimize environmental impacts; and
- (5) The project meets all standards and requirements of the TMX zone.

59-C-14.251. Public facilities and amenities or public use space. The presence of certain public facilities and amenities is intended to create an environment capable of supporting the greater densities and intensities of development. The Planning Board may, under Division 59-D-2.31:

- (a) authorize a payment instead of all or some of the required public facilities and amenities, or any required public use space; or
- (b) permit any required public use space to be provided off-site in the same Transit Station Development Area.

59-C-14.252. Transfer of Density. The Planning Board may approve an optional method of development project for two or more TMX-zoned parcels in the same Transit Station Development Area that are not adjacent to each other, but when combined, total gross tract area is a minimum of 18,000 square feet. A transfer of density may also be approved when the combined gross tract area is less than 18,000 square feet if it is

recommended in an approved and adopted master plan or sector plan. The project must comply with Section 59-C-6.2355; however, if an approved and adopted master plan or sector plan recommends open space or recommends that less than the standard method of development density be retained on the site transferring density, then the maximum gross square feet of future development on the site transferring density may be reduced below the standard method of development density consistent with the recommendations of the master plan or sector plan. Any transfer of density must satisfy the approval requirements of Section 59-D-2.42(g).

59-C-14.26. Existing buildings and uses.

- (a) Any lawful structure, building, or established use that existed before the applicable Sectional Map Amendment adoption date is a conforming structure or use, and may be continued, structurally altered, repaired, renovated, or enlarged up to 10 percent of the gross building floor area or 7,500 square feet, whichever is less. However, any enlargement of the building that is more than 10 percent of the gross floor area or 7,500 square feet of construction of a new building must comply with the standards of the TMX Zone.
- (b) In the TS-R and TS-M zones, development under a development plan approved before adoption of the applicable Sectional Map Amendment remains valid, and construction may proceed subject to applicable approvals. Any increase in density above the approved development plan limit must be subject to the standards of the TMX zone.
- (c) Development under a preliminary plan approved before adoption of the applicable Sectional Map Amendment remains valid, and construction may proceed subject to applicable approvals. A preliminary plan approved before adoption of the applicable Sectional Map Amendment may be

amended after the adoption of the applicable Sectional Map Amendment under the standards of the previous zone or under the TMX zone standards.

59-C-14.27. Special regulations for use of a Building Lot Termination (BLT) Development Right.

Except for residential development subject to the requirement of workforce housing under Section 59-A-6.18, the approval of an application for any gross floor area in an optional method of development project must be subject to the following requirements:

- (a) 12.5 percent of any floor area above the maximum allowed under the standard method of development, as recommended in the applicable master or sector plan, must be supported through the purchase by the applicant of a BLT easement or through a contribution to the Agricultural Land Preservation Fund under Chapter 2B, for purchase of a BLT easement on real property to preserve agricultural land in the County. One Buildable RDT lot must be extinguished for each 9,000 square feet of residential space, or for each 7,500 square feet of non-residential space. The BLT requirement does not apply to residential development in areas subject to the workforce housing program under Section 59-A-6.18 and Chapter 25B.
- (b) If the applicant for optional method of development under the TMX zone cannot purchase an easement, or if the amount of density to be attributed to BLT easement is a fraction of the applicable floor area equivalent, the Planning Board must require the applicant to pay the Agricultural Land Preservation Fund an amount set annually by Executive Regulation.

Sec. 3. Article 59-D is amended as follows:

**ARTICLE 59-D. ZONING DISTRICTS—APPROVAL
PROCEDURES.**

INTRODUCTION

* * *

The following table is provided for the convenience of the public, citing the appropriate sections of article 59-C and indicating the types of plans required in each zone. In the event of any conflict between this table and the provisions of article 59-C, the latter must govern.

Plan Approvals Required

Zone	Section Number	Development Plan (Division 59-D-1)	Project Plan Optional Method (Division 59-D-2)	Site Plan (Division 59-D-3)	Diagrammatic Plan (Division 59-D-4)
* * *					
<i>Standard Method</i>					
* * *					
<u>TMX-2</u>				X	
* * *					
<i>Optional Method</i>					
* * *					
<u>TMX-2</u>			X*	X	

*Projects that require subdivision plan approval are required to satisfy §59-C-14.23(b)(2).

* * *

Sec. 3. Division 59-D-2 is amended as follows:

* * *

Division 59-D-2. Project plan for optional method of development in CBD, TOMX, TMX, AND RMX ZONES.

Sec. 59-D-2.0. Zones enumerated.

The Planning Board is authorized to approve development under the optional method of development procedures described in Section 59-C-6.2 of the CBD

zones, Section 59-C-10 of the RMX [[Zones]] zones, Section 59-C-13 of the
TOMX [[Zones]] zones, Section 59-C-14 of the TMX zone, and the approval
procedure set forth in this Division, for the following zones:

* * *

TMX-Transit Mixed-Use

[TOMX-1-Transit Oriented Mixed-Use, 1.0]

* * *

[TOMX-1/TDR-Transit Oriented Mixed-Use/Transferable Development
Rights, 1.0]

* * *

Sec. 4. Effective date. This ordinance becomes effective 20 days after the date of
Council adoption.

This is a correct copy of Council action.



Linda M. Lauer, Clerk of the Council